

Pt. 4

17 CFR Ch. I (4–1–97 Edition)

Any inability to deal fairly with the public and consistent with just and equitable principles of trade may render an applicant or registrant unfit for registration, given the high ethical standards which must prevail in the industry.

[49 FR 8224, Mar. 5, 1984, as amended at 58 FR 19597, Apr. 15, 1993; 59 FR 5315, Feb. 4, 1994; 61 FR 58628, Nov. 18, 1996]

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

Sec.

- 4.1 Requirements as to form.
- 4.2 Requirements as to filing.
- 4.3–4.4 [Reserved]
- 4.5 Exclusion for certain otherwise regulated persons from the definition of the term “commodity pool operator.”
- 4.6 Exclusion for certain otherwise regulated persons from the definition of the term “commodity trading advisor.”
- 4.7 Exemption from certain part 4 requirements with respect to pools whose participants are limited to qualified eligible participants and with respect to commodity trading advisors’ accounts for clients that are qualified eligible clients.
- 4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.
- 4.9 [Reserved]
- 4.10 Definitions.
- 4.11 Exemption from section 4n(3)(B).
- 4.12 Exemption from provisions of part 4.
- 4.13 Exemption from registration as a commodity pool operator.
- 4.14 Exemption from registration as a commodity trading advisor.
- 4.15 Continued applicability of antifraud section.
- 4.16 Prohibited representations.

Subpart B—Commodity Pool Operators

- 4.20 Prohibited activities.
- 4.21 Required delivery of pool Disclosure Document.
- 4.22 Reporting to pool participants.
- 4.23 Recordkeeping.
- 4.24 General disclosures required.
- 4.25 Performance disclosures.
- 4.26 Use, amendment and filing of Disclosure Document.

Subpart C—Commodity Trading Advisors

- 4.30 Prohibited activities.

- 4.31 Required delivery of Disclosure Document to prospective clients.
- 4.32 [Reserved]
- 4.33 Recordkeeping.
- 4.34 General disclosures required.
- 4.35 Performance disclosures.
- 4.36 Use, amendment and filing of Disclosure Document.

Subpart D—Advertising

- 4.40 [Reserved]
- 4.41 Advertising by commodity pool operators, commodity trading advisors, and the principals thereof.

AUTHORITY: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

SOURCE: 46 FR 26013, May 8, 1981, unless otherwise noted.

Subpart A—General Provisions, Definitions and Exemptions

§ 4.1 Requirements as to form.

- (a) Each document distributed pursuant to this part 4 must be:
 - (1) Clear and legible;
 - (2) Paginated; and
 - (3) Fastened in a secure manner.
- (b) Information that is required to be “prominently” disclosed under this part 4 must be displayed in capital letters and in boldface type.

(Approved by the Office of Management and Budget under control number 3038–0005)

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981]

§ 4.2 Requirements as to filing.

- (a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, DC office (Att: Special Counsel, Front Office Audit Unit, Division of Trading and Markets, C.F.T.C., Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581).
- (b) All such material shall be considered filed when received by the Commission at the address specified in paragraph (a) of this section.

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[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 60 FR 49334, Sept. 25, 1995]

§§ 4.3–4.4 [Reserved]**§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term “commodity pool operator.”**

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term “commodity pool operator” with respect to the operation of a qualifying entity specified in paragraph (b) of this section:

(1) An investment company registered as such under the Investment Company Act of 1940;

(2) An insurance company subject to regulation by any State;

(3) A bank, trust company or any other such financial depository institution subject to regulation by any State or the United States; and

(4) A trustee of, a named fiduciary of (or a person designated or acting as a fiduciary pursuant to a written delegation from or other written agreement with the named fiduciary) or an employer maintaining a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:

(i) A noncontributory plan, whether defined benefit or defined contribution, covered under title I of the Employee Retirement Income Security Act of 1974;

(ii) A contributory defined benefit plan covered under title IV of the Employee Retirement Income Security Act of 1974; *Provided, however,* That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee’s contribution is committed as margin or premiums for futures or options contracts; and

(iii) A plan defined as a governmental plan in section 3(32) of title I of the Employee Retirement Income Security Act of 1974.

(iv) Any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974.

(b) For the purposes of this section, the term “qualifying entity” means:

(1) With respect to any person specified in paragraph (a)(1) of this section, an investment company registered as such under the Investment Company Act of 1940;

(2) With respect to any person specified in paragraph (a)(2) of this section, a separate account established and maintained or offered by an insurance company pursuant to the laws of any State or territory of the United States, under which income gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account, without regard to other income, gains, or losses of the insurance company;

(3) With respect to any person specified in paragraph (a)(3) of this section, the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment authority; and

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That such entity will be operated in the manner specified in paragraph (c)(2) of this section.

(c) Any person who desires to claim the exclusion provided by this section shall file with the Commission a notice of eligibility; *Provided, however,* That a plan fiduciary who is not a named fiduciary but who has an agreement with a named fiduciary as described in paragraph (a)(4) of this section may claim the exclusion through the notice filed by the named fiduciary.

(1) The notice of eligibility must contain the following information:

(i) The name of such person;

(ii) The applicable subparagraph of paragraph (a) of this section pursuant to which such person is claiming exclusion;

(iii) The name of the qualifying entity which such person intends to operate pursuant to the exclusion; and

(iv) The applicable subparagraph of paragraph (b) of this section pursuant